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INTERSTATE COMMERCE COMMISSION

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**LEASE OF RAILROAD EQUIPMENT**

**Dated as of July 1, 1971**

**between**

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

**and**

**FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee**

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**[Covering 200 70-ton General Service Gondola Cars]**

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**LEASE OF RAILROAD EQUIPMENT** dated as of July 1, 1971, between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, an Indiana and Illinois corporation (hereinafter called the Lessee), and FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation (hereinafter called the Lessor), as Trustee under a Trust Agreement dated as of July 1, 1971 (hereinafter called the Trust Agreement), with The First National Bank of Saint Paul.

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of July 1, 1971 (hereinafter called the Security Document), with ELGIN, JOLIET AND EASTERN RAILWAY COMPANY (hereinafter called the Builder) wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interest in the Security Document to UNITED STATES TRUST COMPANY OF NEW YORK, as Agent (hereinafter together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Document on or prior to December 15, 1971 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document:

§ 1. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at the time at which such Unit is delivered to and accepted by the Lessor under the Security Document. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 60 consecutive quarter-annual payments, payable on March 15, June 15, September 15 and December 15 in each year commencing December 15, 1971. The first such payment shall be in an amount equal to 0.027736% of the Purchase Price (as such term is defined in the Security Document) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the Security Document to December 15, 1971 plus 2.49622% of the Purchase Price of each Unit subject to this Lease on the date of such payment; the next 59 quarter-annual payments shall each be in an amount equal to 2.49622% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o United States Trust Company of New York, 130 John

Street, New York, N. Y. 10038, Attention: Corporate Trust Administration. On or before the date upon which payments to the Vendor under the Security Document are due and owing, United States Trust Company of New York is hereby authorized to apply funds received hereunder in Federal funds to make such payment to the Vendor (or to any assignee of the Vendor pursuant to Section 7 of the Agreement and Assignment between the Builder and the Vendor, dated as of July 1, 1971, under which the Security Document is being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Document accrued at the time such payments are due hereunder and, so long as no event of default under the Security Document shall have occurred and be continuing, any balance shall be immediately paid to the Lessor by wire transfer in accordance with its direction.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation under Article 8 thereof, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pur-

suant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms thereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7 and 10 hereof, shall terminate three months after the date on which the final quarter-annual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Document in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Document. If a Declaration of Default (as defined in the Security Document) should be made under the Security Document due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Security Document as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 17 of the Security Document that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A

hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such names and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives

credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Document, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Document. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Document not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall

also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 7. *Payment for Casualty Occurrence.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the sum of (i) the rental due under §3 hereof with respect to such Unit on the date of such payment and (ii) an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set

forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1 .....	102.59438%	31 .....	69.45958%
2 .....	102.50404	32 .....	67.76084
3 .....	102.32845	33 .....	66.04430
4 .....	102.06634	34 .....	64.30994
5 .....	101.71637	35 .....	62.55761
6 .....	101.27752	36 .....	60.78712
7 .....	100.74842	37 .....	58.99832
8 .....	100.12772	38 .....	57.19119
9 .....	99.41403	39 .....	55.36556
10 .....	98.60623	40 .....	53.52125
11 .....	97.72584	41 .....	51.65810
12 .....	96.78489	42 .....	49.77609
13 .....	95.78278	43 .....	47.87503
14 .....	94.71907	44 .....	45.95477
15 .....	93.59316	45 .....	44.01511
16 .....	92.40442	46 .....	42.05604
17 .....	91.15223	47 .....	40.07738
18 .....	89.83613	48 .....	38.07894
19 .....	88.45550	49 .....	36.06055
20 .....	87.00968	50 .....	34.02217
21 .....	85.49804	51 .....	31.96363
22 .....	83.97004	52 .....	29.88474
23 .....	82.42552	53 .....	27.78532
24 .....	80.86432	54 .....	25.66532
25 .....	79.28630	55 .....	23.52457
26 .....	77.69144	56 .....	21.36288
27 .....	76.07960	57 .....	19.18005
28 .....	74.45060	58 .....	16.97604
29 .....	72.80429	59 .....	15.00000
30 .....	71.14067	60 .....	15.00000

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 8. *Annual Reports.* On or before March 31 in each year, commencing with the calendar year 1972, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 10 of the Security Document have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and

rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Document. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation and any administration, division or agency thereof, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit and any and all parts installed on additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Document) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Vendor and any beneficiary under the Trust Agreement from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Document or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 16 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed or was recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or recapture of all or any portion of the Rapid Amortization Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such Rapid Amortization Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a transfer by the Lessor (other than (a) as a result of either a Casualty Occurrence or the requisition or other taking by the United States of America or any agency thereof, or (b) by the assignment of this Lease to the Vendor) of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Security Document or of the assignment of this Lease to the Vendor without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such Rapid Amortization Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such Rapid Amortization Deduction; or

(v) the failure of the Lessor to have sufficient income to benefit from the Rapid Amortization Deduction.

The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee (herein referred to as Counsel), a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action

deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to the Rapid Amortization Deduction disallowed, computed at the rate of 8.625% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9.625% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 235 Montgomery Street, San Francisco, California 94104; and

(b) if to the Lessee, at 208 South La Salle Street, Chicago, Illinois 60604,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease; Modification of Trust Agreement.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render enforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

The Lessor agrees not to enter into any amendment or modification of the provisions contained in Articles 2 and 6 of the Trust Agreement without the prior written consent of the Lessee and the Vendor.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of July 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

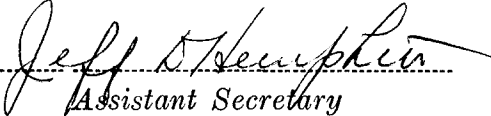
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

FIRST WESTERN BANK AND TRUST  
COMPANY, as Trustee under a Trust  
Agreement dated as of July 1, 1971,  
as Lessor

[CORPORATE SEAL]

by   
Vice President

Attest:


  
Assistant Secretary

ELGIN, JOLIET AND EASTERN  
RAILWAY COMPANY, as Lessee

[CORPORATE SEAL]

by   
Vice President—Finance

Attest:

  
Assistant Secretary

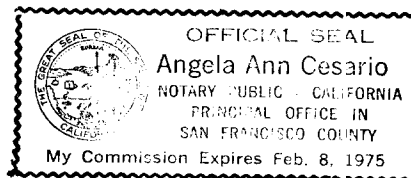
STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 27 day of August, 1971, before me personally appeared EDGAR H. CANFIELD, to me personally known, who, being by me duly sworn, says that he is a Vice President of First Western Bank and Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Angela Ann Cesario  
Notary Public

[NOTARIAL SEAL]

My commission expires



COMMONWEALTH OF PENNSYLVANIA } ss.:  
COUNTY OF ALLEGHANY

On this 2nd day of September, 1971, before me personally appeared V.W. KRAETSCH, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorothy M. Tarr  
Notary Public

[NOTARIAL SEAL]

My commission expires

DOROTHY M. TARR, Notary Public  
Pittsburgh, Allegheny Co., Pa.  
My Commission Expires  
March 31, 1974

# **SCHEDULE A**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
70-ton General Service Gondola Cars	EJ&E General Specification No. 212, July 15, 1970	Joliet, Illinois	200	EJ&E 83464- 83663	\$8,058.39	\$1,611,679.69	October 1971 through December 15, 1971; EJ&E Shops, Joliet, Illinois

Lease, and provided further that immediately after such consolidation, merger or acquisition, such assignee or transferee shall have a net worth which shall not be less than the net worth of the Lessee immediately before such consolidation, merger or acquisition.

§ 13. *Purchase Option.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease, elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or war-

warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it

may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Document), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation duly organized, validly existing and in good standing under the laws of its states of incorporation (specifying the same) with adequate corporate power to enter into the Security Document and this Lease;

B. the Security Document and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Document (and the assignment thereof to the Vendor) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and have been duly deposited in the office of the Registrar General of Canada and notice thereof has been duly published in the *Canada Gazette* pursuant to Chapter 234, Section 148 of the Revised Statutes of Canada, and under existing law such filing and recordation and deposit will protect the Vendor's and the Lessor's interests in and to the Units so long as the Units are located within the United States or Canada, and no filing, recording or deposit (or giving of notice)

with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units so long as the Units are located within the United States or Canada;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Document or this Lease by the Lessee;

E. the entering into and performance of the Security Document or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. under existing law, no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein so long as the Units are located within the United States or Canada; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited in the office of the Registrar General of Canada and notice thereof to be published in the *Canada Gazette* pursuant to Chapter 234, Section 148 of the Revised Statutes of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences

of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission and deposited in the office of the Registrar General of Canada prior to the delivery and acceptance hereunder of any Unit.

In addition to the expenses provided for in Article 20 of the Security Document, the Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Rapid Amortization Deduction (as defined in § 10 of this Lease), with respect to the Units.

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, or the Lessor shall be required to recapture, all or any portion of the Rapid Amortization Deduction with respect to any Unit or any part thereof the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed or recaptured on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof (calculated at the Assumed Rates as defined in § 10 hereof), in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease (taxes being calculated at the Assumed Rates) in respect of such Unit under this Lease to equal the net return (taxes being calculated at the Assumed Rates) that would have been available if the Lessor

had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed or was recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or recapture of all or any portion of the Rapid Amortization Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such Rapid Amortization Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a transfer by the Lessor (other than (a) as a result of either a Casualty Occurrence or the requisition or other taking by the United States of America or any agency thereof, or (b) by the assignment of this Lease to the Vendor) of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Security Document or of the assignment of this Lease to the Vendor without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such Rapid Amortization Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such Rapid Amortization Deduction; or

(v) the failure of the Lessor to have sufficient income to benefit from the Rapid Amortization Deduction.

The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee (herein referred to as Counsel), a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action

deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to the Rapid Amortization Deduction disallowed, computed at the rate of 8.625% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9.625% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 235 Montgomery Street, San Francisco, California 94104; and

(b) if to the Lessee, at 208 South La Salle Street, Chicago, Illinois 60604,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease; Modification of Trust Agreement.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render enforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

The Lessor agrees not to enter into any amendment or modification of the provisions contained in Articles 2 and 6 of the Trust Agreement without the prior written consent of the Lessee and the Vendor.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of July 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

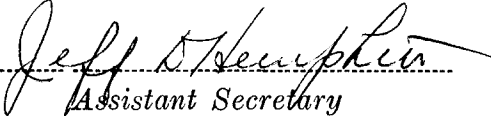
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

FIRST WESTERN BANK AND TRUST  
COMPANY, as Trustee under a Trust  
Agreement dated as of July 1, 1971,  
as Lessor

[CORPORATE SEAL]

by   
Vice President

Attest:


  
Assistant Secretary

ELGIN, JOLIET AND EASTERN  
RAILWAY COMPANY, as Lessee

[CORPORATE SEAL]

by   
Vice President—Finance

Attest:

  
Assistant Secretary

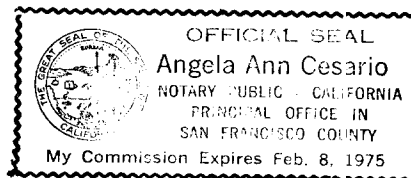
STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 27 day of August, 1971, before me personally appeared EDGAR H. CANFIELD, to me personally known, who, being by me duly sworn, says that he is a Vice President of First Western Bank and Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Angela Ann Cesario  
Notary Public

[NOTARIAL SEAL]

My commission expires



COMMONWEALTH OF PENNSYLVANIA } ss.:  
COUNTY OF ALLEGHANY

On this 2nd day of September, 1971, before me personally appeared V.W. KRAETSCH, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorothy M. Tarr  
Notary Public

[NOTARIAL SEAL]

My commission expires

DOROTHY M. TARR, Notary Public  
Pittsburgh, Allegheny Co., Pa.  
My Commission Expires  
March 31, 1974

# **SCHEDULE A**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
70-ton General Service Gondola Cars	EJ&E General Specification No. 212, July 15, 1970	Joliet, Illinois	200	EJ&E 83464- 83663	\$8,058.39	\$1,611,679.69	October 1971 through December 15, 1971; EJ&E Shops, Joliet, Illinois